IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1148 of 1996

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

DILAWARSINH INDRASINH BHATI - Opponent(s)

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Appearance :
MR HL JANI, APP, for Appellant
MR BHARAT K DAVE for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgement and order dated 30th September 1996 passed by the learned Metropolitan Magistrate, Court No.3, Ahmedabad, in Criminal Case No.546 of 1994 whereby the respondent-accused was acquitted of the charges levelled against him.

2.0 The prosecution case, in short, is that the complainant Kantaben Canduji was working in Arvind Mill on contract basis. On 1.4.1994 she had gone for work along with her daughter Daxa. Her daughter Daxa was playing on the open plot. At that time a Trolley known as Fork Lift driven by respondent accused came and dashed with Daxa. Daxa suffered serious injury and the wheel of the trolley was run over on his stomach. She was therefore taken to civil hospital where she was declared as dead. Thereafter a complaint came to be filed against the respondent for the alleged commission of offences punishable under sections 279, 304(A) of IPC and under sections 177 and 184 of Motor Vehicles Act with Shaherkota Police Station.

2.2 Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, chargesheet was filed against the respondents and the case was numbered as Criminal Case No.546 of 1994 in the Court of learned Metropolitan Magistrate, Court No.3, Ahmedabad.

2.3 For the purpose of proving the case the prosecution has

examined the complainant Kantaben Chanduji (PW1), Natvarbhai Bhagabhai (PW2), Gauthambhai Shantilal (PW3) and Geetaben Mavjibhai (PW4) and Natvarbhai (PW5). After considering the evidence and recording the statement under section 313 and closing purshis the trial court has acquitted the original accused. It is against the said judgement and order of acquittal the present appeal has been filed.

3.0 Learned Advocate for the appellant has contended that the learned Judge has committed an error in discarding the oral evidence of complainant Kantaben, witnesses Natvarbai Bhaga, Gautam Shantilal Gitabe and Natvarlal Magan, etc. He submitted that the respondent was required to take special care while driving the trolley. He, therefore, submitted that the appeal requires to be allowed.

4.0 Heard the learned Advocates for the appellant and respondent and perused the relevant record of the case. Before proceeding further, it is required to be noted the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.1 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of***

M.P. reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.2 Further, in the case of M.S. Narayana Menon Vs. State of Kerala, reported in (2006) 6 SCC 39, the Apex Court held that in case of appeal against acquittal, where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

6.0 In the present case, the trial court has found that the respondent was driving the trolley in a very slow speed and the child Daxa all of a sudden appeared in front of the vehicle and dashed with the vehicle. It is also the finding that the respondent has taken precaution and on reading the panchnama the court has given findings that the brake mark is seen one and half feet distance ahead of the place of incident. From this it is very clear that the vehicle was very slow and therefore the trial court has held that it is not appropriate to hold that the driver was driving the vehicle in a negligent manner. Therefore, taking into overall facts of the case the learned Magistrate has acquitted the respondent. Learned Advocate for the appellant is not in a position to show anything from the record that the respondent was in any manner negligent. Learned Advocate for the appellant has failed to point out anything from the record to reverse the finding of the trial court in any manner whatsoever.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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